

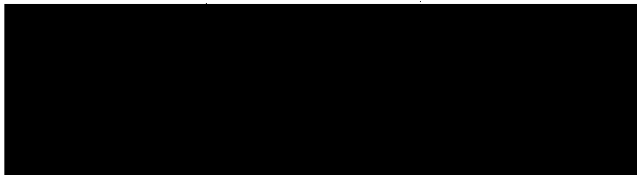


U.S. Department of Justice

Immigration and Naturalization Service

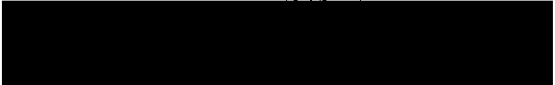
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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-99-219-51362 Office: Vermont Service Center Date:

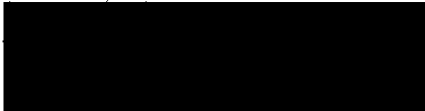
IN RE: Petitioner:  
Beneficiary:



NOV 28 2000

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data removed to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

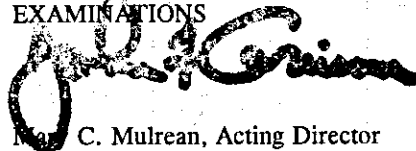
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a religious instructor. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a thirty-eight-year-old single female native and citizen of Nigeria. The beneficiary entered the United States as a visitor on April 16, 1995 and her authorized period of admission expired on June 15, 1995.

The first issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated July 6, 1999, the petitioner stated that:

[The beneficiary's] primary duties require specific religious training beyond that of a dedicated and caring member of the congregation or body . . . [The beneficiary

will] teach Religious Christian Bible classes to member of our denomination . . . Counsel about the avoidance of the scourge of drugs, immorality, and sexual abuse . . . Perform community outreach programs . . . Train members in evangelical work . . . Coordinate with the Pastor for daily coordination and review of religious activities.

On February 18, 2000, the director requested that the petitioner submit additional information. In response, the petitioner stated that the beneficiary "has special qualifications to continue to work for the Church as a Religious Instructor."

On appeal, the petitioner submits certificates awarded to the beneficiary which indicate that she is recognized by the state of New York to work as a residential health care facility nurse aide. The petitioner has not submitted sufficient evidence to establish that the prospective occupation is a religious occupation. The petitioner claimed that an evangelist must receive "specific religious training"; however, the petitioner did not provide any evidence of what this training might entail or whether the beneficiary completed this training. Further, based on the description of the beneficiary's duties, it appears that any devout member of the congregation would be capable of working as an evangelist. As such, the petitioner has not established that the prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary an annual salary of \$15,000.00. On February 18, 2000, the director requested that the petitioner submit additional information. In response, the petitioner submitted a photocopy of its 1999 Form 990-EZ, Return of Organization Exempt from Income Tax. This document indicated that the petitioner had a net asset or fund balance of \$81,887.00 that year. The evidence submitted in support of this petition supports the petitioner's ability to pay the beneficiary an annual salary of \$15,000.00. Accordingly, the petitioner has met the requirements at 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). The petitioner has also failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.